IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5920 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATVARBHAI RAMESHBHAI SOLANKI

Versus

SECRETARY,

Appearance:

MR PH PATHAK for the Petitioner.

Ms.Devani, Assistant GOVERNMENT PLEADER,

for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2002

ORAL JUDGEMENT

Rule. Ms.Harsha Devani, learned AGP, appears and waives service of rule on behalf of the respondents. With the consent of parties, the matter is taken up for

final hearing.

The father of the petitioner was serving as a Sweeper under the District Superintendent of Police (Rural), D.S.P. Office, Surat. While he was in service, he died on 16.2.1996. The petitioner was temporarily appointed as a Sweeper at the Olpad Police Station. The certificate issued by the concerned Police Sub Inspector is also annexed with the petition at Annexure `A', page 8. In the meanwhile, the petitioner therafter submitted an application for giving him compassionate appointment. However, the D.S.P. Surat, rejected the said application on 23.11.1998 on the ground that the income of the family of the deceased is more than Rs.2,500/- per month. Therefore, on the aforesaid basis, the application was rejected. In the meanwhile, the petitioner went on making representations to the D.S.P. and the Inspector General of Police, Ahmedabad, as, according to the petitioner, the income of the family of the deceased was not properly taken into consideration and, according to him, it was less than Rs.2,500/- per month.

At the time of hearing of this petition, Ms.Harsha Devani, learned AGP, submitted that while calculating the aforesaid income, the Department has taken into consideration Rs.1,447/-, which is received by the members of the family of the deceased towards family pension income. According to her, if the said amount is not to be taken into consideration, then the balance income would be about Rs.1,600/- and the same would be less than the prescribed income limit of Rs.2,500/- per month. She, however, submitted that the pension income is required to be taken into consideration as per the Government Resolution.

Mr.Pathak, learned Advocate for the petitioner, submitted that Rs.1,600/- is calculated on the basis of the income of the joint family which includes the income of even uncle and other family members. However, in my view, it is not necessary to examine that question any further in view of the fact that even that income is less than Rs.2,500/-.

There are series of judgments of this Court, taking the view that while calculating the income, the family pension income is not required to be considered. One such decision is rendered by a learned single Judge of this Court (Coram : M.R. Calla, J.) in Special Civil Application No.11020 of 1993. Appeal preferred against the aforesaid judgment, viz. Letters Patent Appeal No.739 of 1999, was dismissed by a Division Bench of this

Court (Coram : C.K. Thakker and C.K. Buch, JJ.) on 13.8.1999.

In the above view of the matter, this petition is required to be allowed and it is accordingly allowed. The impugned decision, rejecting the application of the petitioner is quashed and set aside. The matter is required to be sent back to the Authority for reconsideration. Respondent No.1 is, therefore, directed to take fresh decision in this connection and while taking the decision, the pension income may not be taken into consideration. The fresh decision may be taken within a period of three months from the date of receipt of the writ of this Court.

The petition is accordingly allowed. Rule is made absolute accordingly, with no order as to costs.

Direct service is permitted.

5th February, 2002 (P.B. Majmudar, J.)

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(apj)